

R.07-05-025
Phase II (A)(2)
Working Group Draft Agenda

Pursuant to the February 4, 2009 Assigned Commissioner and Administrative Law Judge's Ruling regarding implementation measures for Phase II (A)(2) of R.07-05-025, Energy Division staff will facilitate this meeting of the Working Group established to develop protocols and strategies for negotiating replacement power contracts to substitute DWR with the Investor-owned Utilities (IOUs).

Objectives of this Meeting:

1. Consistent with D.08-11-056 and the February 4 Ruling, consider prioritization and scheduling of negotiations for replacement contracts in accordance with the principles and priorities adopted in D.08-11-056.
2. As directed by the February 4 Ruling, this first meeting will address the timing and frequency of periodic progress reports to the Assigned Commissioner and ALJ as to whether, or to what the extent, it is proposed that negotiations on a given contract be discontinued, that priorities be redirected, or that negotiating strategies be revised (February 4 Ruling, pg. 2)
3. Consider the requirements for approval of the Tier 3 Advice Letters and the implications of those requirements for documenting the negotiation process and the contents of the Tier 3 Advice Letters.

DRAFT AGENDA

Housekeeping: (1:00 – 1:15pm)

A. Introductions

B. Ground Rules for this meeting

1. Stay on agenda
2. Be polite
3. The working group will not engage in the actual negotiations with counterparties, our role is merely to facilitate discussion (February 4 Ruling, pg. 2)

Detailed Agenda

First Meeting Objective: (1:15 – 1:45pm)

Prioritization and Scheduling of Negotiations

- Consistent with the prioritization set forth in D.08-11-056, the IOUs are not precluded, at the outset, from entering into renegotiation efforts on contracts other than those without novation clauses.
- Should renegotiation efforts begin soon on any of those contracts already containing novation clauses?
- Should SDG&E begin negotiation efforts now?
- Shall renegotiation efforts begin immediately following the first meeting of the working group?
- Any other matters relevant to prioritization and scheduling of negotiations.

Second Meeting Objective: (1:45 – 3:15pm)

Timing, frequency and content of periodic progress reports

Purpose of Progress Reports

- The goal is to curtail unproductive negotiation efforts (February 4 Ruling, pg. 4)
- Progress Reports shall advise as to whether or to what extent it is proposed that negotiations be discontinued, that priorities be redirected or that strategies be revised (February 4 Ruling, pg. 5)
- Master Agreements shall be included in the updated analysis of the implications of this issue (February 4 Ruling, pg. 12)
- A separate redacted version of each Progress Report will be made publicly available (February 4 Ruling, pg. 6)

Timing and Content of Progress Reports

- Determine the appropriate timing and frequency of Progress Reports (February 4, Ruling, pg. 6)
- Determine required content of periodic Progress Reports on negotiation efforts and criteria for assessing the prospects for agreement,

Process for Compiling and Submitting Progress Reports

- Energy Division staff recommends that they be given the role of compiling, into a single report, all material submitted by the IOUs and DWR, including material deemed confidential. In this way, Energy Division staff will compile both the confidential and publicly available redacted reports.
- Within 10 working days after this meeting, Energy Division staff proposes that it shall formally file and serve a schedule for providing periodic progress reports, and a list of contents, specifying those matters that can be made publicly available.

Wrap-up of this topic

- Any other matters relevant to the timing, frequency, contents and preparation of the periodic progress reports.

Break: (3:15 – 3:30pm)

Third Meeting Objective: (3:30 – 5:00pm)

Consider the requirements for approval of the Tier 3 Advice Letters and the implications of those requirements for documenting the negotiation process and the contents of the Tier 3 Advice Letters.

Tier 3 Advice Letter Filings

- Replacement contracts will be submitted for approval through the Tier 3 advice letter process (February 4 Ruling, pg. 13)
- D.07-01-024 prescribes the procedures for Tier 3 advice letters in further detail.

Background: D.08-11-056 and the February 4 Ruling provide guidance regarding how negotiations should be approached

- The existing DWR contracts have never been deemed "just and reasonable" by the Commission (February 4 Ruling, pg. 10)
- The Commission retains full authority to determine whether a replacement contract is "just and reasonable" (February 4 Ruling, pg. 3)
 - Each contract will be evaluated on its own merits (February 4 Ruling, pg. 10)
 - The resulting Replacement Agreement must, at a minimum be at least as beneficial as the existing contract (February 4 Ruling, pg. 9)
 - "As is" novation would be pursued where seeking expanded modifications in contract terms or prices is likely to result in protracted delays or disputes (February 4 Ruling, pg. 10)
 - There should be a showing that an "as is" novation was pursued (February 4 Ruling, pg. 10)
 - A novated contract may continue the same prices and terms as the underlying DWR contract, but that does not mean that the novated contract will automatically be found "just and reasonable" (February 4 Ruling pg. 10)
 - To the extent that a replacement agreement merely replaces an existing DWR contract with no other substantive changes, the replacement would not necessarily affect the IOU's LTPP. (February 4 Ruling, pg. 11)
 - On the other hand, any replacement agreement that would extend the term of a contract should also be reviewed by the Commission for consistency with the long-term procurement planning criteria, pursuant to Section 454.5. (February 4 Ruling, pg. 11)
- The "just and reasonable" determination will be based on: "the conditions, including market conditions, at the time of negotiation, and based on expectations of market conditions in effect during the period that such replacement agreement would be in effect. As such, the review of those contracts will be separate and distinct from the setting in which the previously executed DWR contracts were negotiated and subsequently litigated" (February 4 Ruling, pg. 10)

- Additionally, the just and reasonable determination will be based on principles established in D.08-11-056 (Including but not limited to debt equivalence, collateral costs, stress collateral costs, working capital, administrative costs, etc.) (February 4 Ruling, pg. 10)
- Any further determinations as to specifically how to allocate the early release of operating reserves will be taken up in the next DWR revenue requirement proceeding (February 4 Ruling, pg.17)
- Any just and reasonable findings that may be made by the Commission in connection with replacement agreements executed pursuant to DWR contract novation or other negotiations should in no way be construed as affecting the disposition of any pending litigation relating to existing DWR contracts (D.08-11-056, Conclusions of Law 5)

Wrap-up of this topic

- What are the implications of these requirements for the required contents of the Tier 3 Advice Letters and for documenting the negotiations?
- Any other relevant matters concerning the contents of the Tier 3 Advice Letters.

Close of Meeting and Next Steps

- Is a follow-up meeting necessary?